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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of the Commission's
Rules and Regulations to
Provide Channel Exclusivity to
Qualified Private Paging Systems
at 929-930 MHz

PR Docket No. 93-35
RM-7986

To: The Commission

COMMENTS OF PAGEMART, INC.

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May 6, 1993

No. of Copies rec'd 075
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SUMMARY

PageMart is an innovative paging service company, dedicated to providing cutting-edge, cost-competitive paging services nationwide. The company has pioneered both technological advances and consumer-oriented marketing in order to deliver innovative paging services at affordable prices.

The hallmark of the paging industry is intense competition among service providers. As a result of such competition, the variety of services offered has multiplied, and prices have continued to decline. Increased competition and consumer awareness of the benefits of paging services have resulted in significant congestion in two of the three bands for which there are paging-only frequencies (150 MHz and 460 MHz). Crowding on these bands has, in turn, resulted in considerable litigation between applicants and has slowed the frequency coordination process, as applicants compete for limited spectrum. As a result of the overcrowding in the lower bands, paging companies have in many cases been unable efficiently to construct wide-area systems, discouraging the further development of paging services.

Because the majority of PCP systems in the 900 MHz band do not currently share frequencies, these systems have operated more efficiently and are not currently plagued by

the overcrowding problems faced in the lower bands. The higher equipment and operating expenses of Part 90 PCP carriers have deterred substantial investment in regional and national PCP services, due to the risk that the lack of frequency exclusivity would undermine the economic viability of these systems. Only the major paging companies, including PageMart -- through massive and costly efforts -- have successfully coordinated (and in PageMart's case, constructed) nationwide PCP systems. In order to encourage the continued investment of the millions of dollars required for large-scale national and regional systems, PCP providers need the incentive and protection of channel exclusivity.

With a few, relatively limited reservations, PageMart applauds the Commission's proposal for channel exclusivity in the 900 MHz bands as essential, farsighted policymaking that will encourage technological innovation, spectrum efficiency, and the development of new and improved services. The Commission's proposal also goes far toward

portions of the NPRM that, if adopted, could have a negative impact on existing PCP operators. PageMart urges the Commission to consider seriously certain clarifications to the proposal in the NPRM. These clarifications would take into account the use of frequency-agile transmitters, prevent existing operators from being penalized for their pre-existing investments and innovations, and strengthen the geographic and financial requirements proposed by the Commission.

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COMMENTS OF PAGEMART, INC.

PageMart, Inc. ("PageMart"), by its attorneys, submits these comments in support of the Commission's proposal to provide channel exclusivity to qualified private carrier paging ("PCP") operators. See Notice of Proposed Rulemaking, FCC 93-101 (March 31, 1993) ("NPRM"). Adoption of this amendment to the PCP rules will encourage investment and stimulate further competition among paging companies, and will allow consumers to take advantage of the lower prices and expanded services that will flow from such competition.

Below, PageMart focuses its attention on the proposals most relevant to nationwide paging and generally limits its comment to those aspects of the NPRM that, in PageMart's view, require some clarification and/or modification.

I. INTEREST OF PAGEMART IN THIS PROCEEDING.

PageMart was founded in 1989, specifically for the purpose of providing high-quality, low-cost digital paging services. Competing against entrenched, historically dominant carriers, PageMart's business has grown to the point where it today has over 500 licensed transmitters, operating in 46 states; the company employs over 500 persons. By the close of 1993, PageMart plans to be operating in all 50 states, covering every major metropolitan area. During its brief existence, PageMart has endeavored to advance the state of the industry, from both a technological and a business perspective.

For example, PageMart was the first paging company to build and implement a direct transmission satellite network. This capacity has enabled the company to offer a broad array of local, regional, and nationwide services, using a common, nationwide frequency.

PageMart has devoted considerable energy to pioneering the integration of paging and computers. The company helped pioneer the development of the first pager to meet the specifications of the Personal Computer Memory Card International Association ("PCMCIA"). PageMart also formulated technical specifications and system design for an advanced messaging system with frequency re-use, which is designed to provide two-way data transfer for personal

computers. Additionally, PageMart has begun preparations to provide service to the new wave of users who will be employing paging-capable notebook computers and personal organizers. Via these portable computers/pagers, PageMart will be able to interconnect its subscribers with all manner of electronic databases.

Of equal importance to PageMart's efforts to stay on the cutting edge of technology is its dedication to consumer-oriented marketing of pagers and paging services. PageMart was one of the first to recognize the consumer benefits of selling, rather than leasing, pagers. Additionally, the company has moved as aggressively as it can (within the eligible-user restrictions imposed by Part 90) to begin the retail marketing of its services.^{1/}

Currently, PageMart is the only PCP operator that gives businesses a choice of local, regional, or national paging services. In contrast, radio common carrier operators offer service only on a regional or national basis, forcing their subscribers who also need local service to acquire separate pagers that operate locally. PageMart's

cities for which they require service. PageMart currently provides service to over 200 MSAs, of which more than 80 offer local services, with additional local service provided through PageMart's 800 number services. Adoption of channel exclusivity would enable PageMart to enhance its provision of local services, in some cases to areas that would otherwise not receive service at all.

Through dedication, technological leadership, and a consumer-oriented business strategy, PageMart has grown in four short years from a start-up company to a major force in the paging industry. It is from this perspective that PageMart comments on the proposals set out in the NPRM.

II. PAGING INDUSTRY DEVELOPMENTS.

The combination of explosive growth in demand for paging services and limited spectrum availability in other bands is placing increasing pressure on the 900 MHz spectrum. This band is well-suited to meeting the increasing need for wide-area and regional coverage. Large statewide, regional, and nationwide systems are required to challenge the Part 22 service providers, who currently enjoy frequency exclusivity.

As the Commission has recognized, the continued development and expansion of regional and nationwide systems will be exceedingly difficult if the current system of

shared frequencies in the 900 MHz PCP band is maintained.^{2/} Historically, carriers unable to obtain frequency exclusivity have been reluctant to accept the investment risk that construction of a regional or nationwide system entails. To date, only a few major PCP operators have made the business commitment to develop such systems, relying on the past level of demand and the frequency coordination regime to provide a sort of de facto exclusivity.

Nationwide PCP operators, however, can no longer rely on de facto exclusivity. The explosive demand for paging services -- and the concomitant demand for new channels -- have made the 900 MHz PCP band a focal point for both legitimate applicants and aggressive speculators. Continuation of the status quo will result in seriously adverse consequences for those carriers that already have made a substantial commitment to the development of regional and national systems.

Frequency speculation has long been a serious concern to legitimate operators such as PageMart, and the Commission is correct in its view that, without proper safeguards, channel exclusivity could significantly increase the risk of speculation.^{3/} In PageMart's view, however, the urgent need for frequency exclusivity in the 900 MHz

^{2/} NPRM ¶¶ 14-17.

^{3/} Id. ¶ 20.

band is sufficiently acute that concerns about speculation cannot be allowed to thwart the continued growth of this industry. Moreover, speculation generally has been most pronounced where little capital investment was required in order to tie up a channel; examples include the 220 MHz band, MMDS, and LPTV. The risk of speculation associated with exclusivity can be largely avoided by adoption of meaningful earned exclusivity thresholds, which would require substantial capital investment. In general, the proposals contained in the NPRM relevant to nationwide services should provide adequate protection against speculation, while allowing the enhanced flexibility needed by legitimate operators.

III. THE NATIONWIDE THRESHOLD SHOULD TAKE INTO ACCOUNT RECENT TECHNOLOGICAL DEVELOPMENTS IN THE PAGING INDUSTRY.

PageMart applauds the Commission's farsighted, comprehensive proposal to adopt channel exclusivity for the 900 MHz PCP band. Implementation of the NPRM's basic proposals will have lasting, positive consequences for consumers and the paging industry, and for technological innovation in telecommunications. PageMart is concerned, however, that adoption of some of the Commission's specific proposals may inadvertently injure the very companies that have struggled to make PCP a competitive service. With

minor "fine-tuning" of the NPRM's proposals, these dangers can be avoided altogether.

In the NPRM, the Commission embraced NABER's conservative proposal to require a threshold of at least 300 transmitters before a system would be granted nationwide exclusivity.^{4/} The intention behind establishing this threshold is to provide earned exclusivity for those licensees that have made the substantial investment necessary to develop a nationwide system, and to limit speculation and warehousing.^{5/}

PageMart agrees that the threshold of 300 transmitters is an effective benchmark for establishment of a nationwide system. PageMart also concurs that, as the Commission notes in the NPRM, "it is appropriate to grant exclusivity to licensees who are already operating systems that meet our criteria for exclusivity."^{6/} PageMart is concerned, however, that the existing nationwide operators -- the ones that have made the most significant capital investments and have incorporated the most advanced and cost-effective technology in their systems -- may be penalized by an unnecessarily strict interpretation of this threshold. PageMart urges the Commission to modify its

^{4/} Id. ¶ 26.

^{5/} Id.

^{6/} Id. ¶ 35.

exclusivity proposal in relatively minor ways, in order to take into account the technological realities of the current market.

A. Existing Nationwide Systems Using Frequency-Agile Transmitters Should Not Be Penalized With Regard To The 300 Transmitter Threshold.

To the best of PageMart's knowledge, all existing nationwide PCP operators, and many existing regional and local PCP operators, utilize frequency-agile transmitters in their systems. Frequency-agile transmitters enable PCP operators to service more than one frequency with the same equipment. These systems provide operators with great flexibility in dealing with overflow and expansion requirements, while at the same time significantly reducing hardware costs.

Development of these transmitters was a direct response by the industry to the explosive growth in demand for paging services, and the concomitant need to provide for overflow and system management. While the need is more acute in some markets than in others, the basic nature of a nationwide system necessitates immediate and unfettered access to expansion capacity on the same channel in all markets.

~~To the NABM, the Commission proposed that the~~

transmitters.^{2/} It is not clear from the language of the NPRM, however, how frequency-agile transmitters would be counted toward meeting the 300-transmitter threshold. PageMart requests that the Commission clarify that, for purposes of determining eligibility for frequency exclusivity, each frequency-agile transmitter will count toward one of the channels on which it is licensed to operate. For example, an operator who has made the enormous financial commitment required to build 500 frequency-agile

A failure to accord nationwide PCP operators this flexibility would severely penalize those firms that have made the enormous investment required to develop nationwide systems, and would discourage future investment in these systems. Denying two exclusive channels to frequency-agile systems with 600 or more transmitters could result in PCP operators being forced to abandon the use of one of their de facto nationwide channels, because they might no longer be able to provide for automatic overflow and management on that second common channel. Alternatively, nationwide operators would be forced to make uneconomic decisions regarding hardware and network architecture, with obvious consequences for consumer service costs, solely to satisfy a regulatory requirement.

It is imperative that the Commission take into account the technology and network architecture that the marketplace requires PCP operators to employ in their systems. Incorporation of these considerations into the final rules will lead to more efficient and less costly allocation of spectrum, with consequent benefits for both consumers and the paging industry.

B. Multiple Channel Rules Should Allow More Than One Frequency For Frequency-Agile Transmitters.

In the NPRM, the Commission notes its concern that safeguards are needed to prevent PCP operators from applying

for multiple frequencies solely to block entry by potential competitors.^{8/} PageMart shares the Commission's concern that legitimate operators not be disadvantaged by the anticompetitive behavior of unscrupulous speculators. However, just as the 300 transmitter threshold should be clarified to take into account the practicalities of existing network architecture (and the substantial expenditures of existing nationwide operators), so too should the restrictions on multiple channel applications be clarified, to allow PCP operators with frequency-agile systems to apply for more than one frequency for use with these transmitters.

As discussed supra, in a growing nationwide system -- in which usage in various markets can fluctuate widely based on a host of factors -- it is essential that a second channel be available to meet these real-world problems.^{2/} Under the current shared-use system, which previously had accorded applicants at least a form of de facto exclusivity, nationwide operators sought a second frequency in each major market, not out of a desire to warehouse, but out of competitive necessity. Any de jure

^{8/} Id. ¶ 34.

^{2/} The need for additional capacity will grow exponentially as new services, such as wireless alphanumeric messaging to portable computers, become prevalent.

systems, to incorporate explicitly frequency-agile transmitters (together with geographic distribution of some MSAs), is consistent with the Commission's efforts to discourage warehousing.

Frequency-agile systems have developed in response to the need for a more efficient, less costly use of available spectrum. PCP operators with nationwide networks made the substantial investment in frequency-agile transmitters in response to the growing demand for paging services. Nationwide PCP operators have been actively loading their systems and have built-in capacity to handle overflow loads, consumer upgrades, and explosive growth (particularly as it relates to the emerging service of messaging to portable computer equipment with PCMCIA paging receivers.) The competitive stimulus that caused nationwide PCP operators to design their systems in this manner under a non-exclusive licensing regime will not disappear simply by the adoption of an exclusive licensing plan.

IV. THE GEOGRAPHIC REQUIREMENTS SHOULD BE STRICTER.

The Commission has proposed that, in order to reduce the potential for speculation and warehousing, nationwide systems should be required to meet certain geographic standards. Specifically, the NPRM proposes that nationwide PCP licensees be required (1) to provide service to 50 or more markets, including at least 25 of the top 50

markets; and (2) to serve at least two markets in each of seven geographic regions, modelled on the seven RBOC regions.^{11/}

PageMart supports the first of these benchmarks, but believes that the standard of serving at least two markets in each RBOC region is too low to provide adequate protection against speculation. For example, a PCP operator could concentrate construction of its transmitters on the two coasts, with only nominal investment elsewhere, and yet could still easily meet the proposed standard, tying up the channel(s) nationwide without providing truly nationwide service.

Therefore, PageMart proposes that the Commission stiffen the geographic threshold to require that operators serve at least five markets in each RBOC region before they can be granted nationwide exclusivity. This would not penalize operators who are legitimately developing nationwide systems, but would provide a better deterrent to warehousing.

V. THE REQUIREMENT FOR A FINANCIAL SHOWING SHOULD NOT BE RELAXED.

The Commission requested comments on whether the requirements for a financial showing should be modified to allow for the payment of a performance bond in lieu of a

^{11/} Id. ¶ 26.

financial showing.^{12/} In PageMart's experience, the financial showing standard has not proved to be a burden for legitimate applicants. Given the potential for speculation inherent in any frequency allocation system, PageMart opposes loosening of the financial showing standard; such loosening would only encourage the very misconduct that the other rules here under consideration seek to prevent, without any countervailing benefit for legitimate licensees or the public that they seek to serve.

VI. THE TECHNICAL STANDARDS SHOULD BE MODIFIED TO CONFORM WITH EXISTING REQUIREMENTS FOR COMPETING PART 22 CARRIERS.

Under existing Commission regulations, Part 22 licensees are permitted to operate at up to 3500 watts ERP on nationwide paging frequencies, regardless of whether the licensee has constructed any co-channel transmitters in the vicinity.^{13/} In adopting this rule, the Commission reasoned that co-channel interference would not be a concern, because each licensee would be assigned an exclusive nationwide frequency.^{14/} PageMart urges the

^{12/} Id. ¶ 31, n. 47.

^{13/} See Height and Power Increases in the Public Mobile Service, 4 F.C.C. Rcd. 5303 (1989), modified, 5 F.C.C. Rcd. 4604 (1990).

^{14/} The Commission has recently proposed a further modification of its regulations in Part 22, to allow 3500 Watt operation on all stations in the 931 MHz
(continued...)

Commission to apply the same reasoning to nationwide systems under Part 90, and to permit these systems to operate at up to 3500 watts ERP without a requirement that they be surrounded by existing 1000 watt transmitters of the same

APCO) to obtain coordination.^{16/} PageMart opposes this proposal, which it believes could result in confusion, duplication of effort, and an unworkable coordinating environment.

In particular, PageMart is concerned that the transition from the current shared system to a system of earned exclusivity will pose some substantial spectrum management challenges. PageMart believes that the imposition of additional coordinating entities will only serve further to confuse the coordination process during this transition period, and urges that the current system of coordinating frequency solely through NABER be maintained.

VIII. CONCLUSION

The Commission's proposal for earned channel exclusivity will encourage investment and the effective use of the 900 MHz PCP band, and will benefit both consumers and the paging industry as a whole. PageMart thus supports the Commission's general approach, but urges the Commission to consider carefully the impact of its proposals on existing PCP operators, who have invested substantial resources in the development of paging networks. PageMart is concerned that, without the regulatory flexibility described above, some of the very proposals intended to invigorate the PCP

^{16/} NPRM ¶ 40.

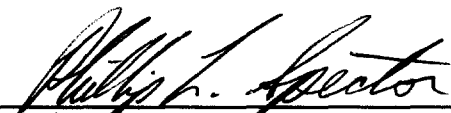
industry could instead undermine substantial segments of that industry.

Based on the above, PageMart requests that the Commission adopt the regulations proposed in the NPRM, with the clarifications and modifications suggested herein.

Respectfully submitted,

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